IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 144 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASHWINBHAI J SHAH

Appearance:

MS KATHABEN GAJJAR, ld APP, for Petitioner

MR HD VASAVADA for Respondent No. 1, 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 30/06/2000

CAV JUDGEMENT

This is a Criminal Revision Application filed under Section 401 of the Criminal Procedure Code, 1973, (for short, "Cr.P.C.") filed by original complainant Navinchandra D Shah challenging the legality, correctness

and propriety of the order dated 13.1.1989 passed by the learned Judicial Magistrate First Class, 2nd Court, Surendranagar, (who will be referred to hereinafter as "the learned Magistrate") in Criminal Case No.212 of 1986 which was pending on his file. By that order the learned Magistrate allowed the application exh.57 which was submitted by the original accused no.2 with a request to dismiss the case being Criminal Case No.212 of 1986 on the ground that the original complainant has lodged complaint against him after prescribed period of limitation i.e. the complaint is barred by limitation and by that order by allowing the application exh.57 the learned Magistrate acquitted both the accused on the ground that the complaint lodged against them was time-barred. By that joint order the application exh.59 which was submitted by the original complainant was rejected. By that application exh.59 the original complainant had requested the learned Magistrate to condone the delay if any occasioned in filing the complaint by him against both the accused.

2 The facts leading to this Criminal Revision Application in a nutshell are as follows:-

3 The original complainant Shri Navinchandra D Shah is an Electrical Inspector appointed u/s 36 of the Indian Electricity Act, 1910. Accused no.1 is an owner of the residential building situated at the place opposite to Amba Chemical, near Dudhrej Fatak at Surendranagar. On or about 21.2.1985 the construction work of that building was going on and was under progress. Accused no.2 Jagjivan Shivlal Solanki was a labour contractor who had taken the contract to construct that building of accused no.1 - Ashwinbahi Jagjivanbhai Shah.

4 On or about 21.2.1985 at about 15.15 hours the wooden planks of RCC centering were being removed and one of that wooden planks was wet by water and that wet wooden plank came into contact with overhead live electric line from which electric current of 20 KVA was passing. That wooden plank was in the hand of one labourer Shri Mohan Mavji Koli of vilalge Dudhrej (Taluka Wadhwan, District Surendranagar) as a result of which that Mohan Mavji Koli was electrocuted and died on the spot.

5 The office of the Gujarat Electricity Board, Surendranagar, by telegram informed the present complainant who was at Ahmedabad about the said unhappy tragic incident. The complainant received that telegram on 22.2.1985. It is the case of the complainant that he

has been invested with the powers to make inquiry in such type of instance u/s 33 of the Indian Electricity Act, 1910. He made such inquiry in his capacity as Electrical Inspector on 23.2.1985. During the inquiry it was revealed that the distance in between the wooden plank which came into contact with overhead electric line and electric line itself was of 42". It is the case of the complainant that as per Rule 80 of the Indian Electricity Rules, 1956 (the same will be referred to as "the Rules" hereinafter), it is compulsory for such type of building owner to keep a minimum distance of 2 meter in between the construction work and the electric wire of the overhead electric line. The accused no.1 being an owner of the building had kept the distance of only 42" in between his building which was under construction and the nearby electirc wire of overhead electric line. Thus accused no.1 was getting the construction work done through accused no.2 by contravening the provisions of Rule 80 of the Rules.

6 It is the case of the complainant that there are some provisions which are to be complied with before construction work begins so that there may not be breach of provisions of Rule 80. As per Rule 82 before starting the construction work of such type of building, the owner as well as the building contractor are duty bound to inform the Electrical Inspector i.e. the complainant and while informing the complainant, both are expected to produce building map and permission to make construction of building. On receipt of such type of application, if the Electrical Inspector is satisfied that it is not likely that there would be breach of Rule 80 then, the complainant has to certify and thereafter the constrction work can be started.

7 The complainant has come with a specific case that in this present case on hand, neither an owner of the building nor the building contractor had given such type of information which was required to be given under Rule 80 to the complainant and thus both the accused have contravened the provisions of Rule 80 and Rule 82 of the Rules. It is the case of the complainant that without making the application under Rule 80 of the Rules and without obtaining the permission under Rule 82 from the complainant, the accused no.1 has got completed the construction work of his building through building contractor, accused no.2, and thus both the accused have contravened the provisions of Rule 80 and 82 of the Rules.

8 As per the case of the complainant, contravention

of Rule 80 of the Rules is punishable under Rule 140(A) of the Rules and in Rule 140-A sentence of only fine is prescribed and person who contravenes the provisions of Rule 80 can be sentenced to pay a fine which may be extend to Rs.300/- and in the case of continuing breach, with a further daily fine which may extend to fifty rupees. For contravention of Rule 82 one can be punished under Rule 140 and the person who contravenes provisions of Rule 82 can be punished with a maximum fine of Rs.300/=. The complainant has come with a specific case that both the accused are jointly and severally liable for such contravention of Rules 80 and 82 of the Rules and therefore both have committed the aforesaid offences. At the end, it is the case of the complainant that both the offences are continuing offences and therefore each of the accused is liable to be punished with a fine of Rs.18,000/= for contravention of Rules 80 and 82 of the Rules.

The complaint in nature of private complaint stating the facts stated herein above was filed in the Court of the learned Magistrate on 5.2.1986. The learned Magistrate took cognizance against both the accused for the said two offences and ordered to issue summons against both the accused. On or about 6.3.1986 accused no.2 appeared before the Court and on that day plea at Exh.8 u/s 251 of Cr.PC was recorded. It appears from the record that accused no.1 appeared before the learned Magistrate and his plea exh.9 was recorded u/s 251 of the Cr.PC. Both the accused had pleaded not guilty to the charge and therefore the learned Magistrate started to record evidence of the complainant at exh.52 as per Section 254(1) of Cr.PC. In the midst of recording of the evidence of the complainant, the learned advocates for both the accused took objection against admissibility of document Mark 53/1 tendered by the complainant in the evidence and on that day on 21.9.1988 the learned Magistrate adjourned the case for hearing of the arguments on the point to decide as to whether Mark 53/1 should be accepted or not.

9 On 19th November 1988 accused no.2 submitted an application exh.57 stating inter alia that the complaint lodged against him is time-barred u/s 468 of Cr.PC. As per his case, limitation will start to run from the date on which the complainant came to know that offence has been committed by accused no.2. As per the computation of the period of limitation by accused no.2, alleged offence took place on 21.2.1985 and the complainant come to know about the occurrence of the offence on 23.2.1985 and therefore the complainant ought to have lodged his

complaint against him on or before 22.8.1985. Instead of 22.8.1985, the day on which the complainant ought to have lodged the complaint, he has lodged this complaint on 5.2.1986 and therefore prima facie the complaint is time-barred and therefore the complaint against accused no.2 be dismissed against him. It appears from the record that on 8.12.1988 the complainant submitted an application exh.59 stating inter alia that the offences for which the complaint is lodged are continuing offences and therefore as per his case in a case of continuing offence fresh period of limitation shall begin to run at every moment of time during which offence continues. Alternatively, the complainant pleaded in his application exh.59 that after coming to know about the occurrence of the incident, he made an inquiry into the incident and thereafter he gave a show-cause notice to accused on 15.03.1985 and both the accused replied to the show-cause notice by their written replies on 4.4.1985. THereafter on 8.4.1985 the complainant wrote a letter to Surendranagar Municipality, Surendranagar, and by that letter he called for certain information from the Municipality. He received a reply on6.8.1985 from the Municipality and thereafter he obtained a legal opinion from the Government Pleader on or about 19.9.1985 and thereafter he wrote a letter to the Government with a request to grant sanction to lodge a complaint against both the accused. Thereafter there was an exchange of letters between the Government and himself and ultimately on or about 23.12.1985 he was granted sanction to prosecute both the accused. Along with sanction he also received a copy of the appointment order under which Government Pleader was appointed to advance the case of the complainant in the Court of the learned Magistrate. Thereafter the Government Pleader wrote a letter dated 7.1.1986 to the complainant and he called the complainant for discussion with him in regard to facts of the case. Thereafter, the Government Pleader gave him a draft of the complaint and ultimately he lodged the complaint on 5.2.1986. As per the facts stated in the application exh.59, looking to the facts and circumstances narrated hereinabove, the complainant pleaded that complaint lodged against both the accused is within time and it cannot be said that the said complaint is time-barred. He has further stated in his application exh.59 that during the aforesaid period there were riots in the entire State and therefore law and order situation was worsened and therefore time was spent by the concerned authorities at every stage. Mentioning the aforesaid facts ultimately the complainant requested the learned Magistrate to hold that there was a sufficient reason for lodging the complaint after prescribed period of

limitation and consequently to condone the delay occasioned in this matter.

10 Both the applications exh.57 and 59 were taken up for hearing at the request of both the parties and after hearing the arguments of the learned advocates for both the parties and after considering the documents produced by the complainant, the learned Magistrate was pleased to pass a joint order on 13.1.1989 whereby he came to the conclusion that the complaint lodged against both the accused is time-barred and therefore no cognizance can be taken against them and therefore the learned Magistrate was pleased to allow application exh.57 and consequently he acquitted both the accused for which the complaint was lodged against them. By said joint order the learned Magistrate rejected the application exh.59 of the complainant and refused to condone the delay and thereby he rejected the application exh.59.

11 Being aggrieved against and dissatisfied with the said judgement and order dated 13.1.1989, the State Government has preferred this Criminal Revision Application u/s 397 read with Section 401 of Cr.PC challenging the correctness, legality and propriety of the orders by which the accused have been acquitted.

12 Here in this Criminal Revision Application, following pure questions of law, based on facts are involved:-

(1) Whether on facts and in circumstances of the case the complaint lodged is time-barred?

(2) If yes, whether order refusing to condone the delay for filing the complaint after prescribed time is correct, legal and proper?

13 The complainant has come with a specific case that both the accused have contravened the provisions of Rule 80 and Rule 82 of the Rules. Looking to the nature of the facts and circumstanes of the case when a specific case is alleged that both the accused have committed breach of Rule 80, it is required to be noted as to what are the requirements of Rule 80.

Rule 80 reads as follows:-

"80. Clearance from buildings of high and extra-high voltage lines --- (1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it

shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than --

(a) for high voltage lines upto and including 33,000 volts 3.7 metres
(b) for extra-high voltage lines 3.7 meters plus 0.30 metre for every additional 33,000 volts or part there of.

(2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than --

(a) for high voltage lines up to and including 11,000 volts 1.2 metres
(b) for high voltage lines above 11,000 volts and up to and including 33,000 volts 2.0 metres
(c) for extra-high voltage lines 2.0 metres plus 0.3 metre for every additional 33,000 volts or part thereof.

Explanation:-
For the purpose of this rule expression "building" shall be deemed to include any structure, whether permanent or temporary.

As per the case of the complainant, contravention of Rule 80(2) of the Rules is punishable under Rule 140(1) of the Rules. It is also the case of the complainant that accused has contravened the provisions of Rule 80(2) and that Rule 80(2) is punishable under Rule 140A of the Rules. Rule 140A of the Rules reads as under:-

Rule 140A:-

"Penalty for breach of Rules 77, 79 or 80 - Where a person is responsible for any construction which is or which results in contravention of the provisions of rules 77, 79 or 80, he and the

contractor whom he employs shall be punishable with a fine which may extend to three hundred rupees, and in the case of a continuing breach, with a further daily fine which may extend to fifty rupees."

14 The first and foremost contention of Ms Kathaben Gajjar, the learned APP for the State, is to the effect that looking to the nature of offence and the object for which Rules 80 and 82 are framed, the said offences are "continuing offences" and therefore in view of Section 472 of Cr.P.C. provisions with regard to limitation contained in Section 468 of Cr.P.C. will not be applicable to this case. She has further argued that in the case of "continuing offence" a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

In view of her arguments, it is required to be known as to what is "continuing offence". It is nowhere defined in Cr.PC. In case of STATE OF BIHAR V. DEOKARAN NENSHI reported in AIR 1973 SC 908 a question arose as to what is continuing offence. It has been observed in para 5 of this judgement that, "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance, occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore it constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

15 Again such type of question arose in the case of U.S. & FINANCE CO. PVT LTD. V. DY. CHIEF OFFICER, RESERVE BANK OF INDIA 1980 Cr.LJ 607 (Cal). On relying the ratio laid down in State of Bihar v. Deokaran Nenshi reported in AIR 1973 SC 908 it was held by the Calcutta High Court that "failure or refusal to comply with the terms of said Section creates an offence and continues to be an offence so long as such failure or refusal

persists. In other words, so long as the requirement of the said section is not complied with the offence continues."

16 In case of GOKAK PATEL VOLKART LTD. Vs. DUNDAYYA GURUSHIDDAIAH HIREMATH AND ORS. reported in 1991(2) SCC 141 continuing offence is explained. In para 7 the Honourable Supreme Court has observed as follows:-

"7. What then is a continuing offence?

> According to the Blacks' Law Dictionary, Fifth Edition, (Special Deluxe), 'Continuing' means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is committed over a span of time." As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse." So also a 'Continuous Crime' means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act."

17 Keeping in mind the legal position with regard to continuing offence, now I will examine the rules of which breach is made which is punishable under Rules 140 and 140A of the Rules.

18 Rule 140-A provides for penalty for contravention of Rules 77, 79 and 80 and Rule 140 provides for penalty for contravention of Rule 82 of the Rules. As per Rule 80 (2) of the Rules, it is expected from the building owner that the horizontal distance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than --

(a) for high voltage lines up to
and including 11,000 volts 1.2 metres
(b) for high voltage lines 2.0 metres
above 11,000 volts and
up to and including
33,000 volts
(c) for extra-high voltage
lines 2.0 metres plus
0.3 metre for every
additional 33,000 volts
or part thereof.

19 Here in this case the complainant has come with a specific case in para 4 of his complaint that an overhead electric line of 22 KVA was passing nearby the building which was being constructed by the accused. It is also stated in para 7 of his complaint by the complainant that in such type of situation where the overhead electric line of 22 KVA is passing nearby the building, then, there should be a distance of 2 meters (78.14 inches) in between that overhead line and the building. It is further stated in the said complaint that in the present case there was a distance of only 42 inches and thereby there was a clear-cut contravention of Rule 80(2)(b) of the Rules. At this stage, this Court is required to know that such type of distance between the overhead line and the building is required to be kept for all time to come. It is not the language of the Rule that at the time of construction of the building this type of distance should be kept between the building construction and the overhead electric line. This type of Rule 80(2)(b) is made for the safety of the people considering the maxium deflection due to wind pressure. The openening words of Rule 80(1) read as follows:-

"80. Clearance from buildings of high and extra-high voltage lines --- (1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than --- ..."

20 Here in this case there is no complaint with regard to disobeying of the Rule for not keeping a vertical clearance. Sub-rule (2) of Rule 80 is for a horizontal distance to be kept between the building and the overhead line which passes adjacent to the building and therefore the object is very much clear that it is for the safety of the people so that in case of wind

pressure that overhead line passing adjacent to building may not cause any casualty. Therefore, this idle situation which is incorporated in sub-rule (2) of Rule 80 is required to be kept for all the time to come even after completion of the building and therefore looking to the contravention of Rule and the nature of offence it cannot be said that the offence was committed once and for all when the building was constructed. Looking to the legal position and looking to the nature of the offence, I am of the view that this is a continuing offence because for all time to come the building owner is required to keep a horizontal clearance between his house and overhead electric line. I am also of the opinion that the offence continues till the owner of the building makes necessary arrangement for keeping horizontal clearance between his house and the overhead electric line by keeping a distance of 2 meters. After construction work is completed, that contravention subsists. In no case it can be said that that contravention of clause (b) of sub-rule (2) of Rule 80 of the Rules was completed as soon as that construction work of that building was over. Looking to the language used in Rule 80, an ideal situation is shown for the past, present and future that there must be a horizontal clearance between the building and the overhead electric line of 2 meters and therefore offence of contravention of Rule 80(2)(b) is a continuing offence.

21 In case of State of Bihar v. Deokaran Nenshi (supra) some illustrative cases are given so that one can bring out the distinction between two types of offences. In para 7 one case of Verney v. Mark Fletcher & Sons Ltd. (2) , the question again was whether the offence for which the information was lodged therein was a continuing offence. Sec. 10(1) of the Factory and Workshop Act, 1901 inter alia provided that every flywheel directly connected with steam, water or other mechanical power must be securely fenced. Its sub-s. (2) provided that a factory in which there was contravention of the section would be deemed not to be kept in conformity with the Act. Sec. 135 provided penalty for an occupier of a factory or workshop if he, failed to keep the factory or workshop in conformity with the Act. Sec. 146 provided that information for the offence under Section 135 shall be laid within three months after the date at which the offence came to the knowledge of the Inspector for the district within which the offence was charged to have been committed. The contention was that in May 1905 and again in March 1908 the fly-wheel was kept unfenced to the knowledge of the Inspector and yet the information was not laid until July

22, 1908. The information, however, stated that the flywheel was unfenced on July 5, 1908, and that was the offence charged. It was held that the breach of Section 10 was a continuing breach on July 10, 1908, and therefore, the information was in time. The offence under Section 135 read with s. 10 consisted in failing to keep the factory in conformity with the Act. Every day that the fly-wheel remained unfenced, the factory was kept not in conformity with the Act, and therefore. the failure continued to be an offence. Hence the offence defined in Section 10 was a continuing offence.

22 Here in this case on the date of the incident i.e. on 21.2.1987 on the day on which labourer Mohan Mavji Koli died due to electrocution there was a distance of 42 inches in between the house and the overhead electric line. Thereafter till the date of the complaint that distance of 42 inches continued to exist in between the building of the ownership of opponent no.1 and the overhead line of 22,000 volts which was passing adjacent to the said building. In view of the discussion made hereinabove, the contravention of Rule 80(2)(b) of the Rules is a continuing offence and in no case it can be said that offence was complete on 21.2.1985.

23 Under the circumstances, in case on hand the learned Magistrate has failed to appreciate Rule 80 read with Section 472 of Cr.PC.

24 The second breach is for contravention of Rule 82 which is punishable under Rule 140 of the Rules. On reading sub-rule (1) of Rule 82, if at any time subsequent to the erection of an overhead line (whether covered with insulating material or bare), any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor who he employs to carry out the erection, addition, or alteration, shall if such work, would, during or after the construction result in contravention of any of the provisions of rule 77, 79 or 80, give notice in writing of his intention to the supplier and to the Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank road, and addition or alteration and scaffolding required during the construction.

25 In this case, the accused no.1 who had engaged accused no.2 as a building contractor wanted to make

construction of building at the place just opposite to Amba Chemicals, near Dudhrej Fatak in Surendranagar city and that place was adjacent to overhead electric line of 22,000 volts and therefore he was required to give notice under Rule 82(1) to both the supplier and to the Inspector along with a scale drawing showing the proposed building. Here in this case admittedly, accused no.1 and 2 have not given any notice to the Electrical Inspector before staring the construction work of the building.

26 As per clause (a) of sub-rule (2) of Rule 82, on receipt of the notice referred to in sub-rule (1) or otherwise the supplier i.e. Gujarat Electricity Board shall examine whether the line under reference was lawfully laid and whether the person was liable to pay the cost of alteration and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line and require him to deposit, within 30 days of the receipt of the notice with the supplier, the amount of the estimated cost.

As per clause (b) of sub-rule (2) of Rule 82 of the Rules, if the person referred to in sub-rule (1) disputes the suppliers estimated cost of alteration of the overhead line or even the responsibility to pay such cost, the dispute may be referred to the Inspector by either of the parties whereupon the same shall be decided by the Inspector.

As per sub-rule (3) of Rule 82 of the Rules no work upon such building, structure, flood bank, road, and addition or alteration thereto shall be commenced or continued until the Inspector has certified that the provisions of rule 77, 79 or 80 are not likely to be contravened either during or after the aforesaid construction. There is a proviso to sub-rule (3) of Rule 82 and that proviso speaks that Inspector may, if he is satisfied that the overhead line has been so guarded as to secure the protection of persons or property from injury or risk of injury, permit the work to be executed prior to the alteration of the overhead line or in the case of temporary addition or alteration, without alteration of the overhead line. Thus, the object of framing of Rule 80 is very much clear. The Inspector is required to examine an application submitted under sub-rule 1 of Rule 82 and then to satisfy that overhead line has been so guarded as to secure the protection of the persons or property from injury or risk of injury and on his satisfaction being arrived at, he is required to grant permission to the person who proposes to make

construction of building. Under the circumstances, it was the duty of both the accused to given a notice under Rule 82(1) of the Rules to both the supplier i.e. Gujarat Electricity Board and the Electrical Inspector showing intention to make a construction of a building just near the overhead electric line at a distance of only 42 inches. Had they given such type of notice, Electrical Inspector would have processed the subject of shifting overhead electric line so that there could be a minimum distance of 2 meters in between the proposed building of accused no.1 to be constructed with the help of building contractor accused no.2 and overhead electric line.

25 At this stage, it is required to know as to what is the overhead line. It is defined in sub-clause (i) of sub-section (1) of Section 2 of the Act as under:

> "Overhead line" means any electric supply line which is placed above the ground and in the open air but does not include live rails of a traction system"

26 Under the circumstances, the necessity to inform the Gujarat Electricity Board and the Electrical Inspector still continues because, as per sub-rule (3) of Rule 82 accused no.1 and 2 were prohibited to commence or continue the work of construction of building until the Electrical Inspector has certified that the provisions of Rule 77, 79 or 80 are not likely to be contravened either during or after the aforesaid construction and therefore even after the constructionthe permission of the Electrical Inspector is very much necessary. Admittedly, accused have not obtained any such permission by submitting the application under sub-rule (1) of Rule 82 of the Rules and thus to my mind this contravention of Rule 82 is also a continuing offence. It cannot be said to be an offence completed on the building being fully constructed and therefore both the contraventions of Rule 80 and Rule 82 are continuing offences and in no case it can be said that they were offences which were completed on the date of offence i.e. on 21.2.1985.

27 In view of the discussion made hereinabove, the learned Magistrate who passed an order below exh.57 erred in coming to a conclusion that these offences are not continuing offences in view of provisions of Section 472 of Cr.P.C. Therefore, even on the date of lodging the complaint, the aforesaid two offences were alive and in no case provisions of Sections 469 and 470 will be

applicable to the present case.

28 Ms Kathaben Gajjar, the learned APP, has argued that in view of the facts stated in the application exh.59 the complainant has explained the delay in lodging the complaint and considering that fact stated in exh.59 the learned Magistrate ought to have condoned the delay by exercising his powers u/s 473 of Cr.PC. As the said offences are continuing offences, question does not arise for explaining the delay and therefore on that only score the order dated 13.1.1988 by which application exh.57 was granted is not a correct and legal order and therefore it requires to be set aside.

29 In the result, this Criminal Revision Application deserves to be allowed and therefore it is accordingly allowed and the order dated 13.1.1988 passed below exh.57 is set aside with a direction to the learned Magistrate as the original Criminal Case is 14 years old, to proceed further with the case from the stage of 21.9.1988, mentioned in the deposition of Complaiant Navinchandra D Shah, Exh.52 and dispose of the case in accordance with law within three months from the date of receipt of writ of this order by him and make report to that effect to this Court.

(H. H. Mehta J.)
(mohd)

FARAD

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 144 of 1989

STATE OF GUJARAT
Versus
ASHWINBHAI J SHAH

MS KATHABEN GAJJAR, ld APP, for Petitioner
MR HD VASAVADA for Respondent No. 1, 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 30/06/2000

For the reasons recorded in the CAV Judgment, this Criminal Revision Application deserves to be allowed and therefore it is accordingly allowed and the order dated 13.1.1988 passed below exh.57 is set aside with a direction to the learned Magistrate as the original Criminal Case is 14 years old, to proceed further with the case from the stage of 21.9.1988, mentioned in the deposition of Complaiant Navinchandra D Shah, Exh.52 and dispose of the case in accordance with law within three months from the date of this order and make report to that effect to this Court. Rule is made absolute with no order as to costs.